FILE COPY

No. 462

In the Supreme Court of the United States

OCTOBER TERM, 1939

GERMANTOWN TRUST COMPANY, TRUSTEE OF THE GERMANTOWN TRUST COMPANY BOND INVESTMENT FUND, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT

INDEX

CITATIONS

206544—40——1

In the Supreme Court of the United States

October Term, 1939

No. 462

Germantown Trust Company, Trustee of the Germantown Trust Company Bond Investment Fund, petitioner

v.

Guy T. Helvering, Commissioner of Internal Revenue

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the Circuit Court of Appeals for the Third Circuit (R. 48–52) is reported at 106 F. (2d) 139. The unpublished memorandum opinion of the United States Board of Tax Appeals is printed in the record at pages 16–17.

JURISDICTION

The judgment of the Circuit Court of Appeals (R. 52–53) was entered July 14, 1939. The petition for a writ of certiorari was filed October 13,

1939, and was granted November 13, 1939. (R. 54.) The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the court below had authority to review the decision of the United States Board of Tax Appeals.

2. Whether the assessment of the tax involved in this proceeding was barred by the statute of limitations at the time the deficiency notice was issued.

STATUTES INVOLVED

The pertinent provisions of the statutes involved are printed in Appendix A, *infra*, pp. 32–35.

STATEMENT

This proceeding involves a deficiency in income tax asserted by the Commissioner of Internal Revenue against the Germantown Trust Company Bond Investment Fund for the year 1932. The facts were stipulated before the Board of Tax Appeals (R. 29–43), and the stipulation was adopted by the Board as its findings of fact (R. 16).

The Germantown Trust Company is a trust company organized and existing under the laws of the State of Pennsylvania, with its principal office in Philadelphia. It conducts a large trust business involving the handling of all forms of trust estates, and also acts as agent for various individuals and

corporations in the custody, handling and management of their investments. In order to afford persons of small means the advantage of investing funds in diversified high grade bonds without delay and undue expense and under conditions which would permit ready liquidation of the investment, the Germantown Trust Company, by agreement dated April 1, 1930, formed the Germantown Trust Company Bond Investment Fund, the Trust Company being designated trustee under the terms of the agreement. At all times material to this proceeding the Trust Company has acted as such trustee under the terms of that agreement.[1] (R. 29–30.)

The tax period here in question is the calendar year 1932, but the petitioner has never filed a *return of tax* for that year on Treasury Form 1120 (which is required for corporate income tax returns) on behalf of the Germantown Trust Company Bond Investment Fund. However, it did file for that period with the Collector of Internal Revenue for the First Collection District of Pennsylvania, an *information* return on behalf of the Fund, a so-called "Fiduciary Return of Income" on Treasury Form 1041 (R. 35, 53A-B). The information return disclosed gross income of $29,-309.09 for the year 1932, consisting of interest on

[1] A copy of the agreement of April 1, 1930, the provisions of which are not material to the questions raised by this appeal, is attached as Exhibit A to the stipulation of facts filed with the Board of Tax Appeals. (R. 36–43.)

bank deposits, notes, bonds, etc., and deductions totaling $2,738.51. (R. 35, 53A.)

On September 17, 1936, the Commissioner of Internal Revenue prepared a so-called "Substitute Return" on Form 1120 (Corporation Income Tax Return) for the Germantown Trust Company Bond Investment Fund (R. 35, 53C).

The individual participants in the Fund who were required to make federal income tax returns for the year 1932 for the amounts of the income of the Fund distributed or distributable to them, included in their respective returns their share of the income as disclosed by a schedule attached to the information return filed by the Germantown Trust Company. The last date on which any participant in this fund filed his return was, for the purpose of this proceeding, March 15, 1933. (R. 35–36.)

On or about July 8, 1936, an internal revenue agent recommended that the Germantown Trust Company Bond Investment Fund be taxed as a corporation as defined by Section 1111 (2) of the Revenue Act of 1932 and Article 1312 of Treasury Regulations 77. (R. 36.)

On February 27, 1937, the Commissioner of Internal Revenue mailed a notice of deficiency to the Germantown Trust Company Bond Investment Fund, Germantown Trust Company, Trustee, stating, among other things, that during the year 1932 it was operating as a corporation as defined by

Section 1111 (2) and Article 1312, Regulations 77, Revenue Act of 1932. (R. 8–11, 36.) An appeal from this notice was taken to the Board of Tax Appeals by a petition filed on May 22, 1937. (R. 4–7.) The only questions raised by that petition were: (1) whether the Germantown Trust Company Bond Investment Fund was taxable for the year 1932 as a corporation; and (2) whether assessment and collection of the deficiency were barred at the time the deficiency notice was mailed. (R. 4–5, 16.)

Without passing upon the question whether the Fund was taxable as a corporation, the Board held that assessment of the deficiency was barred by the provisions of Section 275 (a) of the Revenue Act of 1932 prior to the date the deficiency notice was mailed. (R. 16–17.)

The Commissioner appealed to the Circuit Court of Appeals for the Third Circuit, where the additional question was raised, whether that court had power to review the decision of the Board. The jurisdiction of that court was invoked under Section 1002 (a) of the Revenue Act of 1926, as amended by Section 519 (a) of the Revenue Act of 1934, which permitted review by that "Circuit Court of Appeals for the circuit in which is located the collector's office to which was made the return of the tax in respect of which the liability arises or, if no return was made, then by the Court of Appeals of the District of Columbia."

206544—40——2

The Circuit Court of Appeals held that the information return filed by the taxpayer was sufficient to give it authority to review the order of the Board, but that such "return" was not a "return of the tax imposed by this title" within the meaning of Section 275 (c) of the 1932 Act and that the proposed assessment was therefore timely. It accordingly reversed the decision of the Board.

SUMMARY OF ARGUMENT

I

The Circuit Court of Appeals for the Third Circuit had authority to review the decision of the Board. Appellate review in Board cases is given exclusively to the several circuit courts of appeals and the Court of Appeals for the District of Columbia. And under Section 1002 of the Revenue Act of 1926, as amended by Section 519 of the Revenue Act of 1934, venue is laid in the circuit in which is located the office of the collector to which was made the return of tax in respect of which the liability in controversy arises.

It is our position that the Third Circuit was the appropriate place in which to seek review of the Board's decision, because petitioner had filed its fiduciary return in Philadelphia. Although that return was merely an information return rather than a return of the tax, it was nevertheless sufficient to identify petitioner geographically with the Third Circuit. And since the venue provisions

here involved are merely a convenient device for distributing appellate review among the intermediate federal courts so as to produce the minimum amount of hardship on the taxpayer, it seems clear that the word "return" should be interpreted so as to permit review in the circuit with which the taxpayer is geographically identified.

II

On the other hand, the fiduciary information return was not such a return of tax as would start the running of the statute of limitations against the Government. Section 275 (c) of the 1932 Act, upon which we rely, provides that where a corporation makes "no return of the tax imposed", but where each of the shareholders reports his distributive share, a deficiency may be assessed against the corporation "within four years after the last date on which any such stockholder's return was filed." And since "such last" date was March 15, 1933 in this case, the proposed assessment was timely because the deficiency notice was mailed on February 27, 1937.

Section 275 (c) was enacted to deal with precisely the kind of case as is here presented. The term "corporation" had long been defined in the revenue acts to include "associations"; but the application of the statute to particular situations had produced considerable litigation, and no satisfactory criteria had then been authoritatively out

lined as a basis for solution of the problem. Accordingly, Congress thought that some trustees, mistakenly believing their trust to be a pure trust rather than an association, would not file any corporate return of tax, but would merely file a fiduciary information return, leaving it to the beneficiaries (or shareholders) to report their distributive share of the income for taxation.

When viewed against the background of its legislative history, it seems plain that Section 275 (c) is applicable here, and that the information return was not a "return of the tax imposed" within the meaning of these provisions. Although the information return was a sufficient return to identify the taxpayer geographically with the Third Circuit for the purpose of appellate venue, it certainly was not a "return of the tax imposed" for the purpose of the limitations provisions, which have a wholly different legislative history. Indeed, far from being a "return of the tax imposed", it was a disclaimer of liability and in effect advised the Commissioner to look elsewhere for the taxes.

Section 275 (a), upon which petitioner relies, is not applicable here. It deals with the general case and provides that in the ordinary situation the tax must be assessed within two years after the return was filed. But those general provisions are limited by the specific provisions of Section 275 (c) which are directed at just such a situation as is presented here.

ARGUMENT

I

THE COURT BELOW PROPERLY EXERCISED ITS POWER TO REVIEW THE DECISION OF THE BOARD OF TAX APPEALS

1. Whether the Circuit Court of Appeals properly exercised its authority to hear this case is, strictly speaking, a question of venue rather than of jurisdiction. Pursuant to Section 1001 (a) of the Revenue Act of 1926, c. 27, 44 Stat. 9, a decision of the Board of Tax Appeals may be reviewed by the Circuit Courts of Appeals and the Court of Appeals for the District of Columbia.[2] And, by Section 1003 those courts are given exclusive jurisdiction to review such decisions. Cf. *Old Colony Tr. Co.* v. *Commissioner,* 279 U. S. 716. The question in the case at bar is whether the venue properly lay in the Circuit Court of Appeals for the Third Circuit.

Section 1002 of the 1926 Act is entitled "Venue," and, as amended by Section 519 (a) of the Revenue Act of 1934, c. 277, 48 Stat. 680, 760, provides as follows:

VENUE

> SEC. 1002. (a) Except as provided in subdivision (b), such decision may be reviewed by the Circuit Court of Appeals for the cir-

[2] This section was amended by Section 1101 (a) of the Revenue Act of 1932, c. 209, 47 Stat. 169, to require that the petition for review be filed within three months after the Board's decision is rendered.

cuit in which is located the collector's office to which was made the return of the tax in respect of which the liability arises or, if no return was made, then by the Court of Appeals of the District of Columbia.

(b) Notwithstanding the provisions of subsection (a), such decision may be reviewed by any Circuit Court of Appeals, or the Court of Appeals of the District of Columbia, which may be designated by the Commissioner and the taxpayer by stipulation in writing.

In the instant case no stipulation was entered into between the Commissioner and the taxpayer, as permitted by subsection (b), so that the sole question is whether the information return filed with the Pennsylvania collector was a "return of the tax in respect of which the liability arises" within the meaning of subsection (a). If it was such a return, then review was properly sought in the Third Circuit, which embraces Pennsylvania. We believe that the court below correctly determined that it was authorized to entertain the appeal, and it was on account of the confusion produced by the contrary result in *Commissioner* v. *Roosevelt & Son Inv. Fund*, 89 F. (2d) 706 (C. C. A. 2d), that we did not oppose the taxpayer's petition for certiorari in the present case.[3]

[3] Because of the uncertainty resulting from the *Roosevelt & Son Inv. Fund* decision, the Commissioner was compelled to file two petitions to review the Board's decision in the instant case in order to protect the Government's interests: one in the Circuit Court of Appeals for the Third Circuit,

2. In authorizing appeals to that circuit court of appeals for the circuit in which the return was filed, Congress was merely undertaking to distribute jurisdiction among the intermediate federal courts in such manner as would best serve the convenience of the taxpayer. Otherwise, serious hardship might result to a taxpayer, were he compelled to travel great distances beyond his circuit in order to litigate his claim. And it was for the purpose of accommodating the taxpayer that Congress placed venue in the circuit in which the return was filed.[4]

In short, the filing of the return was to be the consideration which identified the taxpayer with a particular geographical area. Where no return has been filed, the statute provides for review by the Court of Appeals for the District of Columbia, for in that situation there is absent the particular fact which makes one circuit more appropriate than another. And even under those conditions the parties may, pursuant to subsection (b), stipulate as to venue in some circuit court of appeals.

With the foregoing considerations in mind as the underlying basis for the allocation of appellate review among the intermediate federal courts, it is readily apparent that the petitioner has filed such

---

and the other in the Court of Appeals for the District of Columbia. Consideration of the appeal to the latter court has been postponed by agreement of the parties until final determination of this proceeding.

[4] Compare Section 1000 of the 1926 Act amending Title IX of the Revenue Act of 1924, c. 234, 43 Stat. 253, so as to provide in Section 907 (e) thereof that the Board shall hold hearings at points convenient to taxpayers.

a return as identifies it with the Third Circuit. That is the place that is most convenient to the taxpayer, and the circuit court of appeals located therein was undoubtedly the one that Congress intended should hear the appeal. Although the return was merely an information return it nevertheless served to fix petitioner geographically just as though it had been an ordinary corporate return. We respectfully submit that the return in this case was such a return as conferred power upon the court below to entertain the appeal. And any possible ambiguity in the language of Section 1002 (a) should be resolved in accord with the object which it sought to achieve. Cf. *Burnet* v. *Guggenheim*, 288 U. S. 280, 285; *Haggar Co.* v. *Helvering*, No. 176, present Term, decided January 2, 1940.

That the convenience of the taxpayer was the primary objective of these provisions is revealed by a survey of the events which led to their enactment. These provisions appeared in Section 519 (a) of the 1934 Act, and superseded the provisions first enacted in the 1926 Act. Under the 1926 Act it was originally provided in Section 1002 that in the case of an individual the decision should be reviewed "by the Circuit Court of Appeals for the circuit whereof he is an inhabitant", or if not an inhabitant of any circuit, then by the Court of Appeals for the District of Columbia; that in the case of a person other than an individual the decision should be reviewed "by the Circuit Court of Appeals for the circuit in which is located the office

of the collector to whom such person made the return'', or, if no return was made, then by the Court of Appeals for the District of Columbia;[5] that in the case of a corporation which had no principal place of business or principal office or agency in the United States the decision should be reviewed by the Court of Appeals of the District of Columbia; and that in the case of an agreement between the Commissioner and the taxpayer, "then by the Circuit Court of Appeals for the circuit, or the Court of Appeals of the District of Columbia, as stipulated in such agreement''.

Thus, an individual was identified geographically with the place in which he was an inhabitant, whereas an artificial person was identified with the place where it filed its return. Certain difficulties arose, however, in the application of those provisions. In the case of corporate taxpayers, the statute was narrowly construed to restrict the right to stipulate for review outside the circuit in which the return was made.[6] Again, there was doubt as

---

[5] The term "person" was defined by Section 2 (a) (1) of the Act as an individual, a trust or estate, a partnership, or a corporation. The term "corporation" was defined by paragraph (2) to include associations, joint-stock companies, and insurance companies. See *Ayer* v. *Commissioner*, 63 F. (2d) 231 (C. C. A. 2d), certiorari denied, 289 U. S. 752.

[6] *Massachusetts Fire and Marine Ins. Co.* v. *Commissioner*, 42 F. (2d) 189 (C. C. A. 2d); *Nash-Breyer Motor Co.* v. *Commissioner*, 42 F. (2d) 192 (C. C. A. 2d), affirmed, 283 U. S. 483; *Grain King Mfg. Co.* v. *Commissioner*, 47 F. (2d) 608 (C. C. A. 2d); *Spring Canyon Coal Co.* v. *Commissioner*, 38 F. (2d) 764 (C. C. A. 8th).

to the appropriate court to which to take an appeal where an individual taxpayer had died after instituting a proceeding in the Board and the proceeding was continued by his personal representative who was an inhabitant of a different circuit. *Rusk* v. *Commissioner,* 53 F. (2d) 428 (C. C. A. 7th); *Matheson* v. *Commissioner,* 54 F. (2d) 537 (C. C. A. 2d); *Turner's Estate* v. *Helvering,* 68 F. (2d) 759 (App. D. C.); *Ayer* v. *Commissioner,* 63 F. (2d) 231 (C. C. A. 2d), certiorari denied, 289 U. S. 752. Troublesome litigation likewise arose over the proper appellate venue in cases involving the liability of a transferee of the taxpayer, where the taxpayer and his transferee resided in different circuits. *Burnet* v. *White Eagle Oil & Refining Co.,* 58 F (2d) 141 (C. C. A. 8th); *La Salle Cement Co.* v. *Commissioner,* 59 F. (2d) 361 (C. C. A. 7th). And the doubts in those situations increased where there were several executors or several transferees, each of whom resided outside the circuit of the primary taxpayer as well as of each other.

Section 519 (a) of the 1934 Act was enacted, amending the original provisions in the 1926 Act to eliminate the difficulties occasioned by that earlier legislation. Under the amended statute review might be had in all cases, whether the taxpayer is an individual or artificial person, "by the Circuit Court of Appeals for the circuit in which is located the collector's office to which was made the return

of tax in respect of which the liability arises".[7] These new provisions, however, were merely intended as more certain substitutes for their predecessors, and the dominant consideration continued to be the convenience of the taxpayer.

There is nothing in the legislative history of the amendatory provisions upon which to base a conclusion to the contrary. The provisions were proposed and adopted as an amendment while the bill was under consideration by the Senate. See the statement of Senator Harrison in presenting the amendment. 78 Cong. Rec., Part 6, p. 6325. See also Hearings before the Ways and Means Committee on Revenue Revision, 1934, pp. 196–197; Hearings before the Committee on Finance of the Senate on H. R. 7835, 73d Cong., pp. 67, 81–82. The conference committee accepted the Senate amendment with the explanation that it amended the law "so as to provide for review in the circuit in which is located the collector's office in which the return was filed, or by the Court of Appeals of the District of Columbia if no return was filed." H. Rep. No. 1385, 73d Cong., 2d Sess., p. 28, Appendix B, *infra*, p. 36. And the legislative history of Section 519 of the 1934 Act is devoid of any indication that the use of the words "return of the tax in respect of which the liability arises", instead of the word

[7] These provisions have been incorporated in the Internal Revenue Code, as Section 1141 (b).

"return" as in Section 1002 (b) of the 1926 Act had any other purpose than to designate with certainty the court to which an appeal would lie in the case of transferees, executors, administrators, fiduciaries, and others who did not file the return which gave rise to the liability in controversy.

We submit that a construction of this statute which would give no recognition to a fiduciary return would defeat the deliberate purpose of Congress. It is clear that the statute is not dealing with a return which *discloses* the liability of transferees or executors or administrators, and there is accordingly no reason to suppose that it necessarily contemplates the disclosure of the liability of fiduciaries. Unlike a statute prescribing time limitations, this statute is satisfied if the liability of these classes of taxpayers arises "in respect of" the return which was filed.

II

ASSESSMENT OF THE PROPOSED DEFICIENCY IS NOT BARRED BY THE STATUTE OF LIMITATIONS.

1. The tax year here involved is 1932, and the deficiency notice was mailed by the Commissioner on February 27, 1937. The question is whether the mailing was timely. The Government relies upon Section 275 (c) of the Revenue Act of 1932 which provides that where a "corporation makes no return of the tax imposed", but where each of the shareholders reports his distributive share

of the corporation's net income, then the corporation's tax may be assessed "within four years after the last date on which any such shareholder's return was filed". And such "last date" in this case was stipulated to be March 15, 1933 (R. 35–36). Accordingly, since the deficiency notice herein was mailed on February 27, 1937, within four years, it is clear that the mailing was timely, if Section 275 (e) is held to be applicable.

The taxpayer, on the other hand, relies upon Section 275 (a) of the 1932 Act which requires that the tax "shall be assessed within two years after the return was filed." And since petitioner filed its information return on March 15, 1933 (R. 35), it is apparent that the deficiency was not mailed within two years thereafter.

It is our position that the information return filed by petitioner in 1933 was not the kind of return that could start the running of the statute of limitations, and that Section 275 (e) rather than Section 275 (a) furnishes the applicable period of limitations.

2. We contend, as was held by the court below, that although the information return here involved was a "return" for the purpose of fixing venue in the Third Circuit within Section 1002, as amended, it was not such a "return" within Section 275 (a) and (e) as would start the running of the period of limitations. Congress was dealing with wholly

different matters in those sections, which should be interpreted in the light of what it was seeking to accomplish.

That the meaning of the word "return" is not exactly the same in the amended provisions of Section 1002, as in Section 275 is, of course, immaterial if it was used in a different manner. The content of a word changes with its context. *Towne* v. *Eisner*, 245 U. S. 418, 425. And it is clear that the same word may have a different meaning when used in different provisions of the same statute. See *Helvering* v. *Stockholms &c. Bank*, 293 U. S. 84, 86–88, and *Helvering* v. *British-American Tobacco Co.*, 69 F. (2d) 528 (C. C. A. 2d), affirmed, 293 U. S. 95, involving construction of the word "obligation" as used in different provisions of the same revenue act.[8]

Similarly, the words "tax imposed by this title" are used in Section 271 of the Revenue Acts of 1932

---

[8] For examples of cases construing particular words in tax statutes see *United States* v. *Ninety-nine Diamonds*, 139 Fed. 961, 966 (C. C. A. 8th), construing the word "false"; *Eliot Nat. Bank* v. *Gill*, 218 Fed. 600 (C. C. A. 1st), and *National Bank of Commerce* v. *Allen*, 223 Fed. 472 (C. C. A. 8th), construing the words "false and fraudently"; *Oglesby Coal Co.* v. *Commissioner*, 46 F. (2d) 617 (C. C. A. 7th), construing the word "computed"; *Darby-Lynde Co.* v. *Alexander*, 51 F. (2d) 56 (C. C. A. 10th), construing "gross income"; *Ayer* v. *Commissioner*, 63 F. (2d) 231 (C. C. A. 2d), certiorari denied, 289 U. S. 752, construing "individual" and "persons other than an individual" as used in Section 1002 of the Revenue Act of 1926. See also *United States* v. *Fisk*, 3 Wall. 445.

and 1934 in contra-distinction to "amount shown as the tax by the taxpayer upon his return." In that context the words clearly mean the true and correct tax, but no one has suggested that the identical words in Section 275 (c) refer exclusively to a return which *correctly* calculates the amount of tax due.

In Section 1002, Congress was merely designating the particular intermediate federal court to which an appeal might be taken. An appeal was allowable in all cases, and it was simply necessary to devise some convenient formula for distributing appellate review among the various courts. The circuit in which the return was filed was selected as the basis for appellate venue because it was thought to be the most feasible place consistent with avoiding hardship to the taxpayer. An information return does not differ from a return of the tax itself for the purpose of identifying the taxpayer geographically with a particular circuit. And the word "return" as used in Section 1002, as amended, should therefore be construed to embrace an information return, in order to effectuate the purpose of the venue provisions.[9]

[9] Practical considerations alone require that the word "return" be construed differently in the venue provisions, for any other conclusion would lead to a curious and absurd result here. The applicable limitations statute (Sec. 275 (a), Sec. 275 (c), or Sec. 276) always depends upon the final determination of the question whether the trust is taxable as an association. In this case there is the additional ques-

Section 275, on the other hand, is directed at a very different problem. Unlike a statute determining venue, the provision here involved deals with an event which is designed to put the Commissioner on notice that the tax liability is fixed unless he acts within a given time. Thus, while we think the venue statute is satisfied by a return which discloses the existence of any taxpayer (whether or not it be the transferee, executor, or fiduciary ultimately held liable), we believe that the limitations statute contemplates a return which puts the Commissioner on notice that he is dealing with a taxpaying entity. Section 275 (c) specifically refers, not merely to a return, but to "the return of the tax imposed by this title." And the requirement that there be a "return of the tax" is one that must be faithfully complied with to start the running of the period of limitations.

Thus, in *Lucas* v. *Pilliod Lumber Co.*, 281 U. S. 245, it was held that even a formal return of the tax which contained all the necessary information was not a sufficient compliance with the statute where it lacked the signatures of the officers of the

---

tion whether the filing of the fiduciary return prevents the application of Section 275 (c). These questions remain open until it is determined upon the merits whether the taxpayer is an association.

The question of venue, however, cannot remain at large until the merits are decided. The petitioner must have a sure and certain test in order to enable him to determine the court which is to review the decision of the Board.

corporate taxpayer. See also *Commissioner* v. *Krug*, 78 F. (2d) 57, 59 (C. C. A. 9th). In the instant case the information return filed by petitioner constituted an even wider departure from the statutory requirement. Far from being a return of the tax imposed upon petitioner, the information return consisted of a disclaimer of tax liability. In effect, the information return stated that a certain amount of net income had been received but that the beneficiaries were the taxpayers upon whom liability was imposed by the statute. Not only was it not a "return" within the strict sense, but it certainly was not a "return of the tax" within Section 275 (c). And since it was not a "return of the tax" under Section 275 (c), the Commissioner's deficiency notice, which was mailed within the four-year period specified therein, was therefore timely. It remains, therefore, but to consider whether Section 275 (c) is otherwise applicable.

3. There are only three provisions in the 1932 Act that have any possible bearing upon the period of limitations here. The first is Section 275 (a). It is captioned "General Rule", and requires that the assessment must be made "within two years after the return was filed."

The second provision is contained in Section 276 (a) which declares that the tax may be assessed at any time in the case of a false return or "of a failure to file a return".

The third provision is found in Section 275 (c), which provides as follows:

> (c) *Corporation and shareholder.*—If a corporation makes no return of the tax imposed by this title, but each of the shareholders includes in his return his distributive share of the net income of the corporation, then the tax of the corporation shall be assessed within four years after the last date on which any such shareholder's return was filed.

It is our contention that if petitioner is liable for taxes at all, then Section 275 (c) supplies the applicable period of limitations. Sections 275 (a) and 276 (a) merely deal with the general rule, which, we submit, is limited by the more specific provisions in Section 275 (c) directed at the very situation here before the Court.

Subsection (c) first appeared in the law as Section 277 (a) (5) of the Revenue Act of 1926. The reasons which led to its enactment are not far to seek.

The term "corporation" had been defined in the various revenue acts to include "associations".[10]

---

[10] Section 1 of the Revenue Acts of 1918, c. 18; 40 Stat. 1057; 1921, c. 136, 42 Stat. 227; 1924, c. 234, 43 Stat. 253; and 1926. Thereafter, the same definition appeared in Section 701 of the 1928 Act; Section 1111 of the 1932 Act; Section 801 of the 1934 Act; Section 501 of the 1935 Act, c. 829, 49 Stat. 1014; Section 1001 of the 1936 Act; and Section 901 of the 1938 Act, c. 289, 52 Stat. 447.

which expanded the meaning of "corporation." However, the precise meaning of "association" gave rise to considerable speculation, and there was much dispute as to when the trustees and beneficiaries of a trust could be treated as members of an association within the meaning of the revenue acts. Although there had been many lower court decisions on the question, and, indeed, several decisions of this Court,[11] the guiding principles had not been satisfactorily and authoritatively outlined until late in 1935 when this Court decided *Morrissey* v. *Commissioner,* 296 U. S. 344; *Swanson* v. *Commissioner,* 296 U. S. 362; *Helvering* v. *Combs,* 296 U. S. 365; and *Helvering* v. *Coleman-Gilbert,* 296 U. S. 369.[12]

[11] *Crocker* v. *Malley,* 249 U. S. 223; *Hecht* v. *Malley,* 265 U. S. 144.

[12] Indeed, in view of the illusive character of the inquiry, doubt has persisted even after the foregoing decisions as to their precise application to specific instances. And the litigation on the merits in the instant case is so.e indication of the unwillingness of taxpayers to accept those principles as applied to particular facts.

Here the Board, at first, found it unnecessary to decide the merits, for it ruled against the Government on the limitations issue (R. 16–17). But upon remand from the Circuit Court of Appeals, the Board, in an opinion dated September 5, 1939, held petitioner to be an "association" in accordance with the Commissioner's determination. Its opinion in this regard is not part of the record herein, but is set forth as Appendix C, *infra,* p. 37. However, in view of the fact that this case is now pending before this Court, the order of the Board which was entered on September 8, 1939, pursuant to that opinion, has since been vacated in accordance with a joint motion of both parties.

In view of the existing uncertainty in 1926, it was apparent that many trustees and beneficiaries might mistakenly consider their trusts as pure trusts rather than as "associations". Accordingly, it was entirely natural to suppose that many such trustees would erroneously fail to file any corporate return of tax but would simply file a fiduciary information return, leaving it to the beneficiaries to report their distributive share for taxation. The provisions of Section 277 (a) (5) of the 1926 Act, the predecessor of Section 275 (c) of the 1932 Act here involved, were enacted to meet just such a situation.[13] And any possible doubt as to their purpose is dispelled by the explanation of the House Ways and Means Committee which accompanied the original bill (H. Rep. No. 1, 69th Cong., 1st Sess., p. 11):

LIMITATION OF ASSESSMENTS

> SECTION 277 (a) (4).[14] This section provides that if a corporation makes no return of the tax imposed by this bill, but each of the shareholders includes in his return his distributive share of the net income of the corporation, then the tax of the corporation shall be assessed within four years after the

[13] It is significant that like considerations led to the enactment of Section 704 of the Revenue Act of 1928 two years later. See S. Rep. No. 960, 70th Cong., 1st Sess., pp. 44-45; H. Rep. No. 1882, 70th Cong., 1st Sess., p. 24.

[14] The House committee referred to this provision as Section 277 (a) (4), for it was so designated in the bill as reported.

> last date on which any such shareholder's return was filed. This provision is limited to taxes imposed under this bill, and it is incorporated in the bill to make certain that if in the future the beneficiaries of a trust or the members of an association include their distributive share in their income-tax return, and if at a later date it should be held that the trust or association is subject to the corporation tax and should have made the return, the statute of limitations as applied to the trust or association shall run from the dates above specified.

The Senate Finance Committee repeated this explanation in its report. (S. Rep. No. 52, 69th Cong., 1st Sess., p. 28.)

It is clear that Congress was legislating for the express purpose of reaching a special class of cases to which the four-year statute should apply and that the class was intended to include cases presenting the question whether a trust should be taxed as an association. That purpose would be largely defeated by recognizing a fiduciary return as a "return of the tax imposed by this title", because it was then and is now the normal practice for fiduciaries to file information returns.

The fiduciary return filed by petitioner was simply an information return. It patently was not a "return of the tax imposed" within the plain language of Section 275 (c). And the deficiency notice, which was mailed within four years after

the last date on which the shareholders filed their returns, was therefore timely.

The fiduciary return does not initiate the limitation period for the beneficiaries, although their identity is disclosed by the return. The time for assessing each beneficiary runs from the time he files his individual return. In this situation it would be an incongruous result that the fiduciary return nevertheless does start the limitation period for the association, which the return does not identify as a taxpayer.

4. Various miscellaneous contentions are pressed by petitioner, which we believe to be unsound.

(a) Much is made of the fact that the period of limitations in Section 277 (a) (5) of the 1926 Act, as originally introduced in the House, did not allow a longer period for assessment of taxes against associations (Br. 14–15). But that circumstance cannot be of any real significance, for the pivotal consideration is that the bill, as finally enacted, did provide for a longer assessment period in the case of associations. And the very fact that there was a difference between the bill, as enacted, and as introduced, is itself significant. The change occurred either deliberately or by mistake. That it was not a mistake is confirmed by the fact that the longer period of limitations has persisted through repeated reenactments of the statute. The reason for allowing a greater period in the case of associations was probably founded upon the uncertainty

of the criteria which characterize an association, and, as stated by the court below (R. 51–52), it was natural that the Commissioner should be given a longer period for assessment at that time. For, as pointed out *supra*, p. 23, the clarifying decisions of this Court in the *Morrissey* and related cases did not appear until late in 1935.

(b) Again, petitioner argues, relying upon numerous decisions, that the fiduciary information return was a sufficient compliance with the statute to constitute a return of the tax (Br. 19–26). But the cases cited do not support the contention. None of them, except *Roosevelt & Son Investment Fund* v. *Commissioner*, 34 B. T. A. 38, involved the application of Section 275 (c) of the 1932 Act or the corresponding provisions of other revenue acts. And although the decision of the Board in the *Roosevelt* case supports the taxpayer, the clear import of the decision of the Circuit Court of Appeals (89 F. (2d) 706) is to the contrary. This has been recognized by the Board itself, and its later decisions are likewise to the contrary. See *Lee H. Marshall Heirs* v. *Commissioner*, 39 B. T. A. 101, 111–113. See also *United States* v. *National City Bank of New York*, 21 F. Supp. 791, 797–798 (S. D. N. Y.).

Taxpayer assumes that if Section 275 (c) were absent from the statute, or if in any event it were inapplicable through failure of the stockholders to file returns, the result would not be a "no return" case under Section 276 if a fiduciary return had

been filed. We believe that petitioner misconceives those provisions. It relies (Br. 19–21) upon cases under earlier statutes holding that inaccurate returns may nevertheless be treated as "returns" for the purpose of the limitations provisions, if they are in substantial compliance with the Act. But in most of those cases the returns, while inaccurate or incomplete, nevertheless advised the Commissioner that they were the returns of taxable entities to whom the Commissioner could look for the payment of whatever was shown to be due or found upon investigation to be due.[15] Unlike those cases, the return filed here was a disclaimer of liability and advised the Commissioner that he should look elsewhere for the taxes. The return was the report of a fiduciary to the effect that while certain income had been realized by the trust it was not taxable in bulk to any entity, but was to be taxed in the hands of seventy-eight separate taxpayers. We do not believe it can be properly said that a return which is a disclaimer of liability is a "return" within the meaning of Section 276.

However, even if the fiduciary return might be held to be a "return" within the meaning of Section 276, it is clearly not "a return of the tax imposed by this title" within the meaning of Section 275 (c). As we have already pointed out, the re-

[15] Apparently this was not true in *Werbelorsky* v. *Commissioner*, 8 B. T. A. 442, and similar cases cited by taxpayer (Br. 20), and to that extent we think they were wrongly decided.

turn was a disclaimer of tax liability, and in view of the legislative history showing that Congress had this precise situation in mind, the deliberate choice of the language "return of the tax imposed by this title" must indicate that Congress was making a distinction between returns by entities which acknowledged that they alone were liable for any tax found to be due and information returns which indicated that they were not filed by taxpayers.

Moreover, Section 275 (c) is unlike Section 275 (a) in that it is normally applicable to the *whole* tax liability. Section 275 (a) deals with the amount of taxes to be assessed by the Commissioner in a case where a return has been filed, and generally involves *additional* taxes to be assessed. For, the return operates as a self-assessment of the tax which it discloses, and the normal application of Section 275 (a) is to additional taxes revealed after the Commissioner's investigations.[16] This difference in the applicability of Section 275 (c) emphasizes the importance of the words "return of the tax imposed by this title" and lends further support to our contention that the information return which was filed in this case disclosing no tax liability on the part of the trust is not a "return of the tax imposed by this title".

---

[16] Similarly, Section 275 (b) deals with a situation where a return has been filed which operates as a self-assessment and the time allowed is for the purpose of enabling the Treasury Department to discover any *additional* liability and make an assessment to cover it.

A fiduciary return is unlike a return of the tax in that it directs the course of the Commissioner's inquiry into a channel which is inconsistent with treating the trust as an entity. In this respect it is like the claim for special assessment which this Court held inconsistent with a claim for regular assessment. *United States* v. *Henry Prentiss & Co.*, 288 U. S. 73, 86.

(c) Petitioner suggests (Br. 16) that the purpose of Section 275 (c) was not to allow a longer period of limitations in the case of associations, but rather to provide a period of limitations where the members of a group, believing themselves not to be an association, have included their distributive shares in their individual returns and have not filed any fiduciary or corporate return. The difficulty with that interpretation, however, is disclosed by the opinion below (R. 51). For it is normal practice for a fiduciary to file an information return. And without such a return the individuals who had received distributions would have no ready means of ascertaining whether the amounts which they had received corresponded with the "distributive share" which Section 275 (c) contemplates. Petitioner's suggestion (Br. 18) that such information would be readily available to small groups of beneficiaries of family trusts is no answer. The statute is not limited to such small groups, and the case at bar itself furnishes an example of relatively widespread membership extending far beyond the family circle.

(d) Finally, the contention (Br. 24) that the Government's construction produces the inequitable result of taxing the income to the association at a time when it is too late to permit the beneficiaries to recover excessive taxes paid by them on account of the distribution of the same income is unsound. Congress has remedied such situations by Section 820 of the Revenue Act of 1938, c. 289, 52 Stat. 447, which in effect permits equitable adjustments in such cases as this notwithstanding the bar of the statute of limitations.

CONCLUSION

The decision of the court below is correct, and should be affirmed.

Respectfully submitted.

ROBERT H. JACKSON,
Attorney General.

SAMUEL O. CLARK, Jr.,
Assistant Attorney General.

SEWALL KEY,
J. LOUIS MONARCH,
ARNOLD RAUM,
F. E. YOUNGMAN,
Special Assistants to the Attorney General.

FEBRUARY 1940.

APPENDIX A

Revenue Act of 1926, c. 27, 44 Stat. 9:

SEC. 1002. Such decision may be reviewed—

(a) In the case of an individual, by the Circuit Court of Appeals for the circuit whereof he is an inhabitant, or if not an inhabitant of any circuit, then by the Court of Appeals of the District of Columbia.

(b) In the case of a person (other than an individual), except as provided in subdivision (c), by the Circuit Court of Appeals for the circuit in which is located the office of the collector to whom such person made the return, or in case such person made no return, then by the Court of Appeals of the District of Columbia.

(c) In the case of a corporation which had no principal place of business or principal office or agency in the United States, then by the Court of Appeals of the District of Columbia.

(d) In the case of an agreement between the Commissioner and the taxpayer, then by the Circuit Court of Appeals for the circuit, or the Court of Appeals of the District of Columbia, as stipulated in such agreement. [U. S. C., Title 26, sec. 641.]

The foregoing provisions were amended by Section 519 of the Revenue Act of 1934, c. 277, 48 Stat. 680, which provides as follows:

SEC. 519. VENUE FOR APPEALS FROM BOARD OF TAX APPEALS.

(a) Section 1002 of the Revenue Act of 1926 is amended to read as follows:

"VENUE

"SEC. 1002. (a) Except as provided in subdivision (b), such decision may be reviewed by the Circuit Court of Appeals for the circuit in which is located the collector's office to which was made the return of the tax in respect of which the liability arises or, if no return was made, then by the Court of Appeals of the District of Columbia.

"(b) Notwithstanding the provisions of subsection (a), such decision may be reviewed by any Circuit Court of Appeals, or the Court of Appeals for the District of Columbia, which may be designated by the Commissioner and the taxpayer by stipulation in writing."

(b) Section 1002 of the Revenue Act of 1926, as amended by this section, shall be applicable to all decisions of the Board rendered on or after the date of the enactment of this Act, and such section, as in force prior to its amendment by this section, shall be applicable to such decisions rendered prior thereto, except that subdivision (b) thereof may be applied to any such decision rendered prior thereto. [U. S. C., Title 26, Sec. 641.]

Revenue Act of 1932, c. 209, 47 Stat. 169:

SEC. 1. APPLICATION OF TITLE.

The provisions of this title shall apply only to the taxable year 1932 and succeeding taxable years. Income, war-profits, and excess-profits taxes for taxable years preceding the taxable year 1932 shall not be affected by the provisions of this title, but shall remain subject to the applicable provisions of prior revenue Acts, except as such provisions are modified by Title IX of this Act or by legislation enacted subsequent to this Act.

* * * * *

SEC. 52. CORPORATION RETURNS.

(a) *Requirement.*—Every corporation subject to taxation under this title shall make a return, stating specifically the items of its gross income and the deductions and credits allowed by this title. The return shall be sworn to by the president, vice president, or other principal officer and by the treasurer or assistant treasurer. In cases where receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations, such receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns. Any tax due on the basis of such returns made by receivers, trustees, or assignees shall be collected in the same manner as if collected from the corporations of whose business or property they have custody and control.

* * * * *

SEC. 142. FIDUCIARY RETURNS.

(a) *Requirement of return.*—Every fiduciary (except a receiver appointed by authority of law in possession of part only of the property of an individual) shall make under oath a return for any of the following individuals, estates, or trusts for which he acts, stating specifically the items of gross income thereof and the deductions and credits allowed under this title.

* * * * *

SEC. 275. PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION.

Except as provided in section 276—

(a) *General rule.*—The amount of income taxes imposed by this title shall be assessed within two years after the return was filed, and no proceeding in court without assess-

ment for the collection of such taxes shall be begun after the expiration of such period.

(b) *Request for prompt assessment.*—In the case of income received during the lifetime of a decedent, or by his estate during the period of administration, or by a corporation, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun, within one year after written request therefor (filed after the return is made) by the executor, administrator, or other fiduciary representing the estate of such decedent, or by the corporation, but not after the expiration of two years after the return was filed. This subsection shall not apply in the case of a corporation unless—

(1) Such written request notifies the Commissioner that the corporation contemplates dissolution at or before the expiration of such year; and

(2) The dissolution is in good faith begun before the expiration of such year; and

(3) The dissolution is completed.

(c) *Corporation and shareholder.*—If a corporation makes no return of the tax imposed by this title, but each of the shareholders includes in his return his distributive share of the net income of the corporation, then the tax of the corporation shall be assessed within four years after the last date on which any such shareholder's return was filed.

SEC. 276. SAME—EXCEPTIONS.

(a) *False return or no return.*—In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

* * * * *

APPENDIX B

H. Rep. No. 1385, 73d Cong., 2d Sess., p. 28:

Amendment no. 150: Subsection (a) of this amendment amends the provisions of existing law which relate to venue of appeals from the Board of Tax Appeals to the Circuit Courts of Appeal or the Court of Appeals of the District of Columbia so as to provide for review in the circuit in which is located the collector's office in which the return was filed, or the Court of Appeals of the District of Columbia if no return was filed. It further specifically authorizes the Commissioner and the taxpayer to stipulate review by any Circuit Court of Appeals or to stipulate review by the Court of Appeals of the District.

The amendments explained above are applied to all decisions of the Board made on or after the date of the enactment of the act but not to those rendered before such time except that the provisions authorizing stipulation of court of review by the Commissioner and the taxpayer may be applied to decisions rendered prior to that time. The House recedes with an amendment changing the section number.

APPENDIX C

UNITED STATES BOARD OF TAX APPEALS

Germantown Trust Company Bond Investment Fund, Germantown Trust Company, Trustee, Petitioner, v. *Commissioner of Internal Revenue, Respondent.*

Docket No. 89166.

Paul F. Myers, Esq., for the petitioner.
C. R. Marshall, Esq., for the respondent.

MEMORANDUM OPINION

MURDOCK. The Commissioner determined a deficiency of $3,686 in the income tax of this petitioner for 1932. The only issue for decision is whether the petitioner is an association, within the meaning of that term as used in section 1111 (a) (2) of the Revenue Act of 1932, and, therefore, taxable as a corporation. The facts are found as stipulated by the parties.

The Germantown Trust Company, hereafter called the company, was organized under the laws of Pennsylvania and conducts a large trust and agency business involving the managing and investing of funds. It formed the "Fund" here in question on April 1, 1930. The purposes were to make substantially permanent conservative investments in corporate, federal, state, and municipal bonds and to afford persons of small means the

advantage of a diversified bond investment which would be inexpensive and could be quickly liquidated. Only persons for whom the company held securities as agent or trustee could and did participate. Such persons desiring to participate signed an assent to the agreement and deposited cash to be invested and reinvested. A certificate of participation was then issued in the name of the participant but was held by the company. The original shares were issued for a deposit of $1,000 but thereafter for the current worth of the shares. The shares were not transferable but a participant could withdraw all or any of his shares on the first day of any quarter, and the company could issue new shares and take in new participants.

The company was named trustee. It received no compensation from the Fund but could charge the participants for its services as agent or trustee of their funds. The trustee was authorized to manage the common fund, to invest and reinvest, and otherwise control the fund as it thought best. The trust committee of the company managed the fund. Investments were confined to bonds although the trustee had authority to hold and buy and sell stocks also if necessary or advisable. The company kept all of the assets of the fund separate from all other property in its possession and kept separate accounts for the fund showing all transactions. It furnished a statement of investments upon request and it furnished an annual statement of income and principal. All capital gains, with certain exceptions, were treated as principal. Income was divided among the shares and credited quarterly. The trust could be amended or terminated by the company. The latter managed and conducted the

trust at all times in accordance with the agreement of April 1, 1930.

The participants had an undivided interest in the entire Fund. Changes in investments were made whenever they were necessary or deemed advisable. Although some securities were sold shortly after they were purchased, most were held for rather long periods. There were 57 participants owning 487 shares, each worth $841.68, at the beginning of 1932 and 78 participants owning 595 shares, each worth $889.02 at the end of the year. Five persons withdrew twenty-one units during the year and twenty-three new participants came in. The petitioner made twenty-nine sales of thirteen different bonds for $144,500.90 at a loss of $6,460.42 during the year and purchased twenty-six different bonds for $246,615.07 in twenty-six transactions.

Although the differences between the two cases favor the present petitioner, nevertheless those dfferences are insufficient to distinguish this case from that of *Brooklyn Trust Co., Trustee,* 31 B. T. A. 1070, affd. 80 F (2) 865, cert. denied 298 U. S. 659. The facts in the two cases are similar in most respects. The principal differences are that the Brooklyn fund was much larger and had more participants, its investments were not limited to bonds but included stocks and mortgages, and its certificates were in smaller units and could be assigned, although only for cash to other customers of the company. The fund in the present case was large enough that the operation and management of it could constitute a business. Management of a fund invested entirely in bonds can be a business, just as managing one invested in bonds, stocks, and mortgages can be a business. The difference

in size of the units seems relatively unimportant. Although the certificates in one case could be transferred directly, while those in the other could not, nevertheless, a change in participants could be accomplished with about the same degree of ease in one case as in the other. The fund in each case was actively managed for safe investment in a changeable market to the best of the ability of the trustee. The purpose and the form of operation of the two were substantially identical.

The court, in the *Brooklyn Trust* case, cited the four cases decided by the Supreme Court on December 16, 1935, wherein it was pointed out that an ordinary trust is one where particular property is to be held upon specific trusts for the benefit of described persons, while a business trust is not to hold and conserve particular property but is to conduct a business and share its gains. The court also cited its prior decision in *Ittleson* v. *Anderson*, 67 F (2) 323, where it said that if an estate engages in considerable business activity by trading in securities it is conducting an investment business and is taxable as a corporation. It also cited *Investment Trust of Mutual Investment Co.*, 27 B. T. A. 1322, affd. 71 F (2) 1009. It then said of the Brooklyn Trust trustees:

> They were not, to apply the recently pronounced test of the Supreme Court, holding and preserving particular property, with incidental powers, but were conducting a live investment business and sharing its gains. * * *
>
> The large investment here in the various types of securities required active management. To keep such a fund invested in securities to the best advantage was to engage in business in the fullest sense.

Upon authority of the above case and the cases cited therein by the Board and the court, we hold that the present trust was an association taxable as a corporation under the Revenue Act of 1932. See also *Schroeder Employees Thrift Club*, 36 B. T. A. 645.

Decision will be entered for the respondent.

Entered: September 5, 1939.

U. S. GOVERNMENT PRINTING OFFICE: 1940

P. 4.

SUPREME COURT OF THE UNITED STATES.

No. 462.—October Term, 1939.

Germantown Trust Company, Trustee of the Germantown Trust Company Bond Investment Fund, Petitioner, *vs.* Commissioner of Internal Revenue.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[February 26, 1940.]

Mr. Justice Roberts delivered the opinion of the Court.

This case involves the construction and application of provisions of the Revenue ~~Act of~~ 1926, as amended by that of 1934, and of the Revenue Act ~~of~~ 1932, relating to the venue of proceedings to review a decision of the Board of Tax Appeals and setting limitations upon the assessment of income tax.

The petitioner is a trust company, doing a general business as such, including administering trust estates and acting as agent for the custody, handling, and management of its clients' investments. In 1930 it created, by an appropriate instrument, a fund to afford those for whom it acted the advantage of investing small amounts in securities at minimum expense and with opportunity of ready liquidation. The fund has since been managed according to the terms of the agreement. In the course of administration the petitioner has paid to the participants their respective shares of income from the invested principal, and has filed fiduciary returns of income on Treasury Form 1041, intended for use by trustees.

March 15, 1933, the petitioner, as trustee, filed such a return, for the calendar year 1932, with the Collector of Internal Revenue for the First District of Pennsylvania, at Philadelphia. The return accurately set forth the gross income, the deductions, and the net income,—in short all information necessary to the calculation of any tax which might be due,—and attached a list of the beneficiaries of the fund, and their shares of the income. No corporation income tax return was filed on Treasury Form 1120. The participants in

the fund, who were required to make individual returns for the year 1932, included in their respective returns, filed on or before March 15, 1933, their shares of income.

September 17, 1936, pursuant to the recommendation of a treasury agent that the fund be taxed as a corporation,[1] the respondent prepared from the Form 1041 return, a substitute corporation return on Form 1120, covering the year 1932, and, on February 27, 1937, gave notice of a consequent deficiency of tax.

The petitioner carried the matter to the Board of Tax Appeals for redetermination, asserting that it was taxable as a trust and not as an association and that assessment and collection of the asserted deficiency was barred by the expiration of two years from the date its return was filed. The Board held the assessment barred.

The respondent petitioned the United States Court of Appeals for the Third Circuit to review the Board's decision. That court held that the venue provision of Section 1002(a) of the Revenue Act of 1926, as amended by Section 519 of the Revenue Act of 1934,[2] empowered it to entertain the petition, and that the assessment of a deficiency was not barred by Sections 275 and 276 of the Revenue Act of 1932,[3] the applicable section, in its view, being 275(c).[4]

---

1 § 1111(a)(2) of the Revenue Act of 1932, 47 Stat. 169, 289: "The term 'corporation' includes associations" . . . See Morrissey *v.* Commissioner, 296 U. S. 344.

2 Sec. 1002.(a) Except as provided in subdivision (b) [relating to venue by stipulation], such decision may be reviewed by the Circuit Court of Appeals for the circuit in which is located the collector's office to which was made *the return of the tax in respect of which the liability arises* or, if no return was made, then by the Court of Appeals of the District of Columbia. (Italics supplied.) 44 Stat. 9, 110; 48 Stat. 680, 760; 26 U. S. C. 641(b).

3 Sec. 275. PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION. Except as provided in section 276—

(a) *General Rule.*—The amount of income taxes imposed by this title shall be assessed within two years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

(c) *Corporation and Shareholder.—If a corporation makes no return of the tax imposed by this title,* but each of the shareholders includes in his return his distributive share of the net income of the corporation, then the tax of the corporation shall be assessed within four years after the last date on which any such shareholder's return was filed. (Italics supplied.)

Sec. 276. SAME—EXCEPTIONS.

(a) *False Return or No Return.*—In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time. Revenue Act of 1932, 47 Stat. 169, 237.

4 Commissioner *v.* Germantown Trust Co., Trustee, 106 F. (2d) 139.

The petitioner sought certiorari on the ground that the Circuit Court of Appeals' decision that the fiduciary return it had filed was a return which governed venue under Section 1002, as amended, but no return within the meaning of Section 275(c), conflicts with a decision of the Circuit Court of Appeals for the Second Circuit.[5] Because of the conflict we granted certiorari.

Petitioner and respondent agree that the court below was right in holding the return in question was such a return as fixed the venue of the petition for review in the Third Circuit, where the return was filed. We concur in this view.

The petitioner contends that the fiduciary return filed on Form 1041 was a return within the meaning of Section 275(a), which limits the time for assessment to two years after the filing of the return. The respondent insists that the return was "no return of the tax" within the meaning of Section 275(c), and, therefore, the four-year limitation specified in that section applies.

As the notice of deficiency was given more than two years after the filing of the fiduciary return, and within four years of the filing of the last return by any participant in the fund, decision turns upon which subsection governs.

We hold that the return was a return within the meaning of Section 275(a) and that the petitioner cannot be held to have made no return so as to bring the case within Section 275(c).

First. We are of opinion that if the return filed by the petitioner was such as to create venue of the proceeding for review in the court below, it was also a return under the terms of Section 275(a), so that the two-year period of limitations imposed by that section is applicable.

The return was a fiduciary return. It is admitted that the petitioner in respect of the fund was a fiduciary and was bound to file such a return.[6] It contained all of the data from which a tax could be computed and assessed although it did not purport to state any amount due as tax. Section 1002(a), as amended, *supra*, confers venue upon the Circuit Court for the circuit in which was made "the return of the tax in respect of which the liability arises." Section 275(a) provides that the amount of tax must be assessed

---

5 Commissioner v. Roosevelt & Son Inv. Fund, 89 F. (2d) 706.

6 Revenue Act of 1932, 47 Stat. 169, 214.

within two years after "the return was filed." Section 275(c) fixes a period of four years for assessment "if a corporation makes no return of the tax imposed by this title", but each shareholder returns his distributive share of the net income.

We think the language of the sections is such that it cannot be said the fiduciary return filed by the petitioner was a return of the tax in respect of which the liability arises but was no return of the tax imposed by the statute.

The respondent urges that the two sections have separate aims; that the venue provision was inserted for the convenience of taxpayers, so that they should not be compelled to litigate in courts far from their domicile, whereas the limitation sections have nothing to do with the designation of a forum. Conceding that this is true, it remains that, if the return in question complies with the one description, it equally complies with the other. We find no adequate reason for attributing a different meaning to the two phrases.

Second. Section 275(c) is inapplicable. Sections 275 and 276 set up a complete scheme of limitations on assessment of income taxes. Section 275(a) imposes a limitation of two years after the filing of the return. Section 276(a) provides that there shall be no period of limitations if a false return, or no return, be filed. If the statute went no further, and if the respondent's position is correct that, in this case, the taxpayer was a corporation and filed no return as such, then there would be no period of limitations whatever. This was the situation under the Revenue Act of 1924.[7]

The legislative history demonstrates that Section 275(c) was adopted to set a period of limitations where no return is filed by the association but returns are filed only by the members. In other words, subsection (c) was adopted to limit, rather than to enlarge, the time for assessment in such a case.[8]

The respondent's contention is that where a fiduciary, in good faith, makes what it deems the appropriate return, which discloses all of the data from which the tax, treated as one imposed upon an

---

277 [7] Revenue Act of 1924, Secs. 277(a)(1) and 278(a); 43 Stat. 253, 299.

[8] The provision was first inserted as Sec. 277(a)(5) of the Revenue Act of 1926, 44 Stat. 9, 58. The Committee Reports on the section, construed in connection with the course of the bill in Congress, sustain, rather than negative, the view that the section was intended to impose a period of limitation where one had not theretofore existed. See H. Rep. No. 1, 69th Cong., 1st Sess., p. 11; S. Rep. No. 52, 69th Cong., 1st Sess., p. 28. Compare Hearings, Committee on Ways and Means of the House, 73rd Cong., 1st Sess., p. 146.

association (classified as a corporation under the statute), can be computed, such a return is to be deemed no return. We think this view inadmissible.

It cannot be said that the petitioner, whether treated as a corporation or not, made no return of the tax imposed by the statute. Its return may-have been incomplete in that it failed to compute a tax, but this defect falls short of rendering it no return whatever.[9]

The judgment is reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

---

9 Zellerbach Paper Co. *v.* Helvering, 293 U. S. 172, 180; Commissioner *v.* Stetson Co., 43 F. (2d) 553; United States *v.* Tillinghast, 69 F. (2d) 718; Mabel Elevator Co., 2 B. T. A. 517; Abraham Werbelovsky, 8 B. T. A. 442, 446; F. M. Stearns, 16 B. T. A. 889; J. R. Brewer, 17 B. T. A. 704.